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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/789,680

02/27/2004

Richard Fears

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07/20/2009

FAEGRE & BENSON LLP
PATENT DOCKETING - INTELLECTUAL PROPERTY (32469)
2200 WELLS FARGO CENTER
90 SOUTH SEVENTH STREET
MINNEAPOLIS, MN 55402-3901

EXAMINER

LUBIN, VALERIE

ART UNIT

PAPER NUMBER

3626

NOTIFICATION DATE

DELIVERY MODE

07/20/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

e-OfficeActionBSC@faegre.com
dweiss@faegre.com

Office Action Summary	Application No. 10/789,680	Applicant(s) FEARS ET AL.	
	Examiner VALERIE LUBIN	Art Unit 3626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 April 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7, 9-13 and 16-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 9-13, 16-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>2/16/09</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Claims 1-7, 9-13, 16-18 are pending

For reference purposes, the document paper number is 20090713

Response to Arguments

2. Applicant's arguments filed 4/22/09 have been fully considered but they are not persuasive.

Applicant argues that Webb does not disclose communicating information to a server with data from the implantable medical device. Examiner respectfully disagrees. Webb in Figure 1 shows data from the device 10 which receives and feeds data to a programmer 200

which in turns feeds data to a computer 256 or/and a server 282 via the Internet 400. Also see Col. 13 lines 36-42.

3. The rejection of claim 16 under 35 USC § 112, 2nd paragraph is withdrawn in light of Applicant's amendment.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-7, 9-13, 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Webb U.S. Patent No. 6,644,322.

6. With respect to claim 1, Webb discloses a system comprising an antenna (Col. 15 line 43); a receiver comprising a processor (Col. 15 lines 44-45; col. 21 lines 61-63) and a computer readable medium (Col. 4 lines 10-15).

Webb does not specifically recite instructions stored on the computer readable medium and multiple interfaces; however, he does recite receiving a data set from an implantable medical device or IMD and providing a user interface (Col. 4 lines 37-42);

identifying a set of data derived from the IMD (Col. 4 lines 48-51); querying for data based on previously entered data by a physician (Col. 4 lines 48-56) and communicating data to a server via a network (Fig.1 elements 282 and 400). Since Webb discloses one interface, It would therefore have been obvious to one of ordinary space to provide as many interfaces as necessary to complete the disclose steps performed by Webb and to store those steps on the disclosed computer readable medium in order to be able to execute the steps on different computers.

Webb discloses physician entered data. He does not specifically recite physician entered objective data and subjective data; however, the type of physician entered data queried does not further limit claim 1, as it is non-functional descriptive material (In re Gulack, 217 USPQ 401 (Fed. Cir. 1983), In re Ngai, 70 USPQ2d (Fed. Cir. 2004), In re Lowry, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP 2106.01 II)

Claims 7 and 11 are rejected under the analysis of claim 1.

7. Claim 2 is rejected, as Webb discloses the antenna electrically coupled to the receiver (Fig 3 elements 56 and 78; col. 15 lines 43-45).

Claim 9 is rejected under the analysis of claim 2.

8. Claim 3 is rejected as Webb recites a programmer (Col. 12 line 53) and a removable computer readable medium (Col. 4 lines 12-21).

Claims 4 and 12 are rejected under the analysis of claim 3.

9. Claim 5 is rejected as Webb recites a local area network, the Internet, and a public switched telephone network (Col. 6 lines 14-19).

Claim 10 is rejected under the analysis of claim 5.

10. With respect to claim 6, Webb discloses a mobile input device (Col. 9 lines 25-32); verifying data and displaying the data (Col. 5 lines 16-27).

Claims 16-18 are rejected under the analysis of claim 6

11. With regard to claim 13, Webb discloses providing a programmer with an antenna (Col. 15 lines 32-33; 43-45) with the antenna and programmer receiving data (Col. 12 lines 64-67); and storing the data in a removable computer readable medium (Col. 13 lines 40-42).

Conclusion

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to VALERIE LUBIN whose telephone number is (571)270-5295. The examiner can normally be reached on Monday-Friday 7:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher L. Gilligan can be reached on 571-272-6770. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/V. L./
Examiner, Art Unit 3626

/Robert Morgan/
Primary Examiner, Art Unit 3626